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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2818 OF 2007

Harishchandra Pal .. Applicant

versus

State of Maharashtra .. Respondent

...

Mr.Subhash Jha for the applicant.

Ms.Rajeshree M. Gadhvi APP for the State.

WITH

CRIMINAL APPLICATION NO. 3075 OF 2007

Ghanshyam R. Pal & Anr. .. Applicants

versus

State of Maharashtra .. Respondent

...

Mr.V.V. Gangurde for the applicants

Ms.Rajeshree M. Gadhvi APP for the State.

CORAM : D.G.KARNIK, J

DATED : 13th December 2007

P.C.:

1. These two applications for bail under section 439 are being disposed of by a common judgement as both the applicants are co-accused in the crime registered under C.R.No.I-89 of 2005 of Badlapur Police station for the alleged offences punishable under section 302, 201 r/w sec.34 of the IPC. Both the accused have been charge sheeted under a common charge sheet and the matter is presently pending for trial in the court of Addl. Sessions Judge, Kalyan.

2. The prosecution case in short is that on 21st August 2005 at 10.00 a.m. police received an information that a dead body was lying on the way passing through Valivalli village within the jurisdiction of Badlapur police station. Police went to the site and found dead body of an unidentified person with several injuries. Police registered an offence of murder against the unknown accused. After investigation, it was revealed that the body was of one Ghanshyam Koli @ Ghanshyam Kataria (hereinafter referred to as "deceased") During the course of investigation, statement of Mr.Raman Narayan Pal was recorded by the police on

9th December 2006. Ram Narayan Pal is the brother in law of accused no.1 Mr.Harishchandra Pal, the applicant in Criminal Application no.2818 of 2007.(hereinafter referred to as "accused no.1") In his statement Raman Narayan pal has stated that there was a love affair between Pushpa - daughter of accused no.1 and the deceased. Accused no.1 did not approve of the same and was opposed to their marriage. Raman Narayan Pal has further stated that on the Raksha Bandhan day in the year 2005, he along with accused nos.1,2 and 3 and the deceased travelled in a rickshaw tempo. The rickshaw tempo was stopped on the way by the accused no.1, the deceased was brought down and killed. Raman Narayan Pal has further narrated the manner in which the murder was carried out.

3. Learned counsel for the applicants submitted that by an order dated 28th November 2007 passed by this court (myself) bail has already been granted to the rickshaw driver. They therefore claim that on the basis of parity, bail should be granted to them also. Counsel submitted there was no difference in the case of rickshaw driver and the present applicants. Counsel submitted that Raman Narayan Pal has been disbelieved by this court in the order dated 28th November 2007 granting bail to

the rickshaw driver and therefore also bail should be granted to them.

4. Normally, it is not a practice to discuss the evidence in detail while an application for bail is being considered. This is because any detailed consideration of the evidence and any observation by a superior court made while deciding bail application may influence the trial court while trying the case. It needs to be clarified that in the order dated 28th November 2007 passed in Criminal Application no.2647 of 2007 granting bail to the rickshaw driver, I have not made any observations believing or disbelieving statement of Raman Narayan Pal, the eye witness.

5. In my view, the applicants cannot claim parity on the ground that the bail has been granted to the rickshaw driver. In his statement dated 9th October 2006 Raman Narayan Pal has specifically named Harishchandra Pal the accused no.1 (applicant in Criminal application 2818/07) and Ghanshyam Pal the accused no.2 (applicant in Criminal Application no.3075/07) by names and described their role with the crime. Raman Narayan Pal however has not named the rickshaw driver in his statement and only referred to him as "rickshaw driver" to who he did

not know earlier. In his statement, he did not mention that he would be able to identify the rickshaw driver if seen later on. Rickshaw driver was an unknown person and no identification parade was held. As against that, Raman Narayan Pal had not only named the accused nos.1 and 2 but very well knew them. In fact, the accused no.1 is his close relative i.e. brother in law. There was therefore no question of his identity being not known to Raman Narayan Pal. Thus, the case of the applicants is clearly distinguishable from the case of the rickshaw driver and the applicants cannot claim parity on that ground. Ordinarily I would not have discussed this aspect of the evidence of Raman Narayan Pal in deciding the bail application. However, this has been the necessity on account of the insistence of the counsel for the applicants who repeatedly urged parity and further urged that Raman Narayan Pal has been disbelieved by me in the bail application of the rickshaw driver.

6. Learned counsel for the applicants invited my attention to the order dated 19th October 2006 passed in Writ Petition no.1518 of 2006 and stated that the Division Bench of this court had ordered re-investigation into the matter and this showed that the police investigation earlier was faulty.

The statement of Raman Narayan Pal was recorded on 9th December 2006 in the course of reinvestigation ordered by the Division Bench. The Division Bench has not faulted with this investigation which has been carried out after its order dated 19th October 2006. In view of this order of the Division Bench it is unnecessary to refer to any of the statement of any witnesses recorded earlier prior to the order of the Division Bench dated 19th October 2006. The investigation carried out by the police pursuant to the order of the Division Bench dated 19th October 2006 does point out the needle of suspicion towards the present applicants. The offence is of a serious nature which is charged with an offence of murder which is punishable with death or imprisonment for life.

7. Taking into consideration the fact that prima facie evidence connecting the applicants to the crime, it would not be appropriate to grant bail to them at this stage. Accordingly, applications for bail are rejected.

(D.G. KARNIK, J)